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Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: AT&T Motion for Summary Judgment, D.T.E. 01-31, Phase II (Track A)

Dear Secretary Cottrell:

In accordance with the procedural schedule established by the Hearing Officer, Verizon Massachusetts (“Verizon MA”) submits this reply to the Attorney General’s Response to AT&T’s Motion for Summary Judgment (“Attorney General Response”). While supporting denial of AT&T’s Motion, the Attorney General would have the Department essentially reopen Phase I of this case so that the parties may conduct additional discovery, file additional testimony, conduct additional hearings, and submit supplemental briefs on the competitiveness of Business services and in particular the “contestability issue.” (Attorney General Response, at 2, n.2., 7). According to the Attorney General, the “contestability issue” is whether Verizon MA’s “retail business services and private line services were contestable on a UNE basis . . .” (*id.* at 2, n.2). The Attorney General’s position largely echoes the argument made by AT&T in its Motion and is equally wrong.

The Attorney General’s argument is premised on a fundamental misreading of the Department’s *Phase I Order* (May 8, 2002) and *Phase I Order on Clarification* (August 5, 2002), where the Department concluded based on extensive record evidence that “there is sufficient competition in the Massachusetts business marketplace to grant Verizon [MA] pricing flexibility for its business services.” *Phase I Order*, at 91.

The CLEC share of the business market using resale, UNEs, and facilities-based provisioning is supported by substantial evidence (Exh. VZ-3A; RR-DTE-2A) (footnote omitted). All three methods of entry are present and providing competitive pressure in the market. Furthermore, while each specific method of entry into the telecommunications market entails its own costs and benefits (*e.g.*, resale incurs no sunk costs, but also does not allow for innovation),

the combination of methods of entry provide sufficient competition to ensure that prices for business services will remain just and reasonable.

Phase I Order, at 91-92.

The Attorney General's request for findings of contestability on a UNE basis for individual Business services would vitiate and make meaningless the Department's *Phase I Order* and *Phase I Order on Clarification*. The Department has made clear that this issue was already addressed and subsumed under its primary finding of "sufficient competition" in the *Phase I Order*. The Attorney General's proposal would have the Department ignore its own finding that all three methods of competition, *including UNEs*, provide sufficient competition to allow Verizon MA pricing flexibility for retail Business services. The Attorney General's recommendation is without merit and the Department should reject it.

The Attorney General and AT&T seek to exploit the language of a footnote included in the Department's *Phase I Order*, where the Department instructed Verizon MA to identify in its Phase II filing "those retail business services, in addition to private line services, if any, that are not contestable on a UNE basis" (*Phase I Order*, at 62, n.39). Indeed, the Attorney General goes so far as to maintain that the Department has not yet ruled on AT&T's UNE use restrictions and commingling arguments (Attorney General Reply, at 3). This is plainly wrong. As the Department stated in its *Phase I Order on Clarification*:

We will begin our discussion by looking at AT&T's arguments on UNE use restrictions (Exh. ATT-3) and commingling prohibitions (Exh. ATT-6). **Our evaluation of the sufficiency of competition for Verizon [MA]'s retail business services was completed in Phase I with the issuance of the *Phase I Order*.** In Phase I, we conducted a comprehensive evaluation of the state of competition and concluded that with the safeguards enumerated in the *Phase I Order*, Verizon [MA] could be granted pricing flexibility for its retail business services. *Phase I Order*, at 89-95. It is Verizon [MA]'s compliance with the safeguards and conclusions reached in the *Phase I Order*, as shown in Verizon [MA]'s filing of June 5, 2002, that will be the subject of Phase II, not the taking of further evidence and argument on how additional issues affect competition for Verizon [MA]'s retail business services (footnote omitted). **As a result, both AT&T's UNE use restriction argument and commingling argument, which both concern competition for Verizon [MA]'s retail business services, will not be part of Phase II.**

Id. at 14-15 (emphasis added).

Common sense requires rejection of the erroneous conclusion that the *Phase I Order* somehow found that there was “sufficient competition” to permit pricing flexibility, while also finding that parties were free to subsequently attack this same finding in the Department’s review of the compliance filing. See *Plymouth Rock Energy Associates, L.P.*, D.P.U. 92-122, at 10 (1994), citing *Morin v. Commissioner of Public Welfare*, 16 Mass. App. Ct. 20, 24 (1983) (the language of a Department Order should be interpreted according to its plain meaning). The strained interpretation of the *Phase I Order* proffered by the Attorney General has already been rejected by the Department in its *Phase I Order on Clarification*, and cannot be reconciled with the plain language of the findings set forth in the *Phase I Order*. Read in context, the language of the footnote simply did not establish a standalone rule for evaluating the sufficiency of competition that overrode the Department’s comprehensive analyses of the competitive conditions in Business markets.

Accordingly, for all of the reasons stated herein and in Verizon MA’s Opposition to the AT&T Motion, the AT&T Motion should be rejected and the Attorney General’s request for additional hearings on the “contestability issue” should be denied.

Sincerely,

Bruce P. Beausejour

cc: Paula Foley, Esquire, Hearing Officer (2)
Paul B. Vasington, Chairman
William Agee, Assistant General Counsel
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Attached Service List